

1 David F. Taylor, Bar No. 129654
DFTaylor@perkinscoie.com
2 Breena M. Roos (*pro hac vice*)
BRoos@perkinscoie.com
3 PERKINS COIE LLP
1201 Third Avenue, Suite 4800
4 Seattle, WA 98101-3099
Telephone: 206.359.8000
5 Facsimile: 206.359.9000

6 Joshua A. Reiten, Bar No. 238985
JReiten@perkinscoie.com
7 PERKINS COIE LLP
Four Embarcadero Center, Suite 2400
8 San Francisco, CA 94111-4131
Telephone: 415.344.7000
9 Facsimile: 415.344.7050

10 Attorneys for Defendant
Qwest Communications International, Inc.

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 JOHN C. PRATHER on behalf of himself
and the UNITED STATES OF AMERICA
15 and the several states of CALIFORNIA,
DELAWARE, FLORIDA, ILLINOIS,
16 INDIANA, MASSACHUSETTS,
NEVADA, NEW HAMPSHIRE, NEW
17 JERSEY, NEW MEXICO, NEW YORK,
RHODE ISLAND, VIRGINIA, as well as
18 the DISTRICT OF COLUMBIA,

19 Plaintiff/Realtor,

20 v.

21 AT&T INC., CELLCO PARTNERSHIP
d/b/a VERIZON COMMUNICATIONS,
22 QWEST COMMUNICATIONS
INTERNATIONAL INC., and SPRINT
23 NEXTEL CORP.,

24 Defendants.

Case No. CV-09-2457 (CRB) (EDL)

**DEFENDANT QWEST COMMUNICATIONS
INTERNATIONAL INC.'S NOTICE OF
MOTION AND MOTION FOR ATTORNEY'S
FEES AND EXPENSES; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Date: January 10, 2014
Time: 10:00 AM
Courtroom: 6, 17th Floor
Judge: Hon. Charles R. Breyer

TABLE OF CONTENTS

	Page
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. BACKGROUND	2
A. Procedural History	2
B. The Relator Admits To Having No Knowledge Whatsoever of Any Wrongdoing by Qwest	4
C. The Relator Admits to Making False Statements in Filings with this Court.....	5
D. Qwest Incurred Attorneys' Fees and Expenses Defending Against Relator's Unfounded Claims of Fraud	6
III. ARGUMENT	7
A. The Court Should Award Qwest Its Attorneys' Fees and Expenses Pursuant to § 3730(d)(4), the Court's Inherent Power, and Rule 11.....	7
1. Applicable Legal Standards	7
a. Section 3730(d)(4) of the FCA	7
b. The Court's Inherent Power	8
c. Rule 11	8
2. The Record Demonstrates that Relator's Action Was Frivolous	9
B. The Court Has Authority to Award Fees Under § 3730(d)(4).....	12
C. Qwest's Attorneys' Fees and Expenses are Reasonable	15
1. The Number of Hours Expended Are Reasonable.....	16
2. The Hourly Rates Are Reasonable.....	17
IV. CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
<i>Alyeska Pipeline Serv. Co. v. Wilderness Soc'y</i> , 421 U.S. 240 (1975)	8
<i>United States ex rel. Bain v. Georgia Gulf Corp.</i> , 208 Fed. Appx. 280 (5th Cir. 2006)	13
<i>United States ex rel. Barajas v. Northrop Corp.</i> , 5 F.3d 407 (9th Cir. 1993)	13, 14
<i>Branson v. Nott</i> , 62 F.3d 287 (9th Cir. 1995)	14, 15
<i>Buster v. Greisen</i> , 104 F.3d 1186 (9th Cir. 1997), <i>abrogated on other grounds by Fossen v. Blue Cross and Blue Shield of Montana, Inc.</i> , 660 F.3d 1102 (9th Cir. 2011)	9
<i>Chalmers v. City of Los Angeles</i> , 796 F.2d 1205 (9th Cir. 1986)	17
<i>Christian v. Mattel, Inc.</i> , 286 F.3d 1118 (9th Cir. 2002)	11
<i>Citizens for a Better Env't v. Steel Co.</i> , 230 F.3d 923 (7th Cir. 2000)	12
<i>Crawford-El v. Britton</i> , 523 U.S. 574	9
<i>Golden Eagle Distrib. Corp. v. Burroughs Corp.</i> , 801 F.2d 1531 (9th Cir. 1986)	9
<i>United States ex rel. Grynberg v. Praxair, Inc.</i> , 389 F.3d 1038 (10th Cir. 2004)	12, 14
<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994)	15
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983)	15
<i>Hughes Aircraft Co. v. United States ex rel. Schumer</i> , 520 U.S. 939 (1997)	15
<i>Jordan v. Multnomah County</i> , 815 F.2d 1258 (9th Cir. 1987)	15

1	<i>In re Keegan Mgmt. Co. Sec. Litig.</i> ,	
2	78 F.3d 431 (9th Cir. 1996).....	8, 11
3	<i>Martel v. Maxxam, Inc.</i> ,	
4	211 F.3d 594, 2000 WL 329354 (5th Cir. Mar. 23, 2000).....	10, 13
5	<i>Moreno v. City of Sacramento</i> ,	
6	534 F.3d 1106 (9th Cir. 2008).....	15
7	<i>Pfingston v. Ronan Eng'g Co.</i> ,	
8	284 F.3d 999 (9th Cir. 2002).....	7, 8
9	<i>Primus Automotive Fin. Servs. v. Batarse</i> ,	
10	115 F.3d 644 (9th Cir. 1997).....	8
11	<i>Rockwell Int'l Corp. v. United States</i> ,	
12	549 U.S. 457 (2007).....	13
13	<i>United States v. Vuyyuru</i> ,	
14	555 F.3d 337 (4th Cir. 2009).....	13
15	<i>United States ex rel. Atkinson v. Penn. Shipbuilding Co.</i> ,	
16	528 F. Supp. 2d 533 (E.D. Penn. 2007)	13, 15
17	<i>Green v. Baca</i> ,	
18	225 F.R.D. 612 (C.D. Cal. 2005)	16
19	<i>United States ex rel. Herbert v. Nat'l Acad. of Sciences</i> ,	
20	Civ. A. No. 90-2568, 1992 WL 247587 (D.D.C. Sept. 15, 1992)	10, 11, 13
21	<i>United States ex rel. J. Cooper & Assocs. v. Bernard Hoes Grp., Inc.</i> ,	
22	422 F. Supp. 2d 225 (D.D.C. Mar. 23, 2006)	13, 15
23	<i>United States ex rel. Leveski v. ITT Educ. Serv., Inc.</i> ,	
24	No. 1:07-cv-0867-TWP-MJD, 2012 WL 1028794 (S.D. Ind. Mar. 26, 2012)	11
25	<i>United States ex rel. Mikes v. Straus</i> ,	
26	98 F. Supp. 2d 517 (S.D.N.Y. 2000).....	7, 10, 11
27	<i>United States ex rel. Minna Rae Winer Children's Class Trust v. Regions Bank of</i>	
28	<i>La.</i> ,	
	Civ. A. No. 94-4085, 1996 WL 264981 (E.D. La. May 17, 1996)	10
	<i>United States ex rel. Montgomery v. St. Edward Mercy Medical Center</i> ,	
	No. 4:05-CV-00899 GTE, 2008 WL 110858 (E.D. Ark. Jan. 8, 2008)	13
	<i>Public Interest Bounty Hunters v. Bd. of Governors of the Fed. Reserve Sys.</i> ,	
	548 F. Supp. 157 (N.D. Ga. 1982)	11

1	<i>United States ex rel. Sampson v. Crescent City E.M.S., Inc.</i> ,	
2	No. Civ.A 96-3505, 1997 WL 570688 (E.D. La. Sept. 12, 1997)	11
3	Federal Statutes	
4	28 U.S.C. § 1447(c)	12, 13
5	28 U.S.C. § 1919	12
6	31 U.S.C. § 3730	14, 15
7	31 U.S.C. § 3730(d)(4).....	<i>passim</i>
8	31 U.S.C. § 3730(e)(4).....	<i>passim</i>
9	42 U.S.C. § 1983	14
10	42 U.S.C. § 1988	14
11	42 U.S.C. § 11406(a)(1)	12
12	Rules	
13	Fed. R. Civ. P. 11	<i>passim</i>
14	Fed. R. Civ. P. 11(b)	9
15	Fed. R. Civ. P. 11(c)(1)	9
16	Fed. R. Civ. P. 11(c)(4)	9
17	Fed. R. Civ. P. 12(b)(6).....	2
18	LR 54-5(1)(b)(1)	1
19	Other Authorities	
20	99 Sen. Rep. 345, 1986 U.S.C.C.A.N. 5266, 196 WL 31937 (July 28, 1986)	7, 13
21		
22		
23		
24		
25		
26		
27		
28		

1 **NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

2 TO RELATOR JOHN C. PRATHER, PLEASE TAKE NOTICE that on Friday, January
3 10, 2014 at 10:00 AM in Courtroom 6, 17th Floor of the above-captioned Court, located at 450
4 Golden Gate Avenue, San Francisco, California, 94102, or as soon thereafter as counsel may be
5 heard, Defendant Qwest Communications International, Inc. ("Qwest") will and hereby does
6 move for an Order awarding the attorney's fees and expenses incurred in this action in the amount
7 of \$117,326.79. On November 18, 2013, counsel for the parties telephonically met and conferred
8 pursuant to Local Civil Rule 54-5(1)(b)(1) but were unable to resolve the issues raised by this
9 motion. This motion is based on this Notice of Motion and Motion, the Memorandum of Points
10 and Authorities set forth below, the Declaration of David F. Taylor, and such other evidences and
11 argument as may be presented to the Court at or before the hearing.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Relator John Prather's claims against Qwest never had any factual basis. Relator admitted
15 in his own sworn deposition testimony that he knows of no wrongdoing by Qwest—none.
16 Among other things, Relator does not know of anything done by Qwest to defraud any federal or
17 state agency; Relator does not know of a single fact supporting his claims against Qwest; Relator
18 knows nothing about the rates charged by Qwest or the expenses it incurred; Relator could not
19 recall seeing even a single invoice from Qwest; indeed, Relator did not even know whether Qwest
20 submitted any claims to the governments it allegedly defrauded, much less false claims.

21 Filing a lawsuit without any factual basis—especially one accusing a defendant of fraud—
22 is more than sufficient to warrant an award of attorneys' fees and expenses. But Relator's
23 conduct in this case is even more egregious. Relator asserted his baseless claims against Qwest
24 not once, but twice. Given a second chance by this Court to reconsider his claims and file an
25 Amended Complaint, Relator chose to persist with his baseless claims against Qwest. Moreover,
26 Relator chose to buttress his claims with false representations about his personal knowledge of
27
28

1 the facts—representations that Relator admitted to be false only when placed under oath and
2 deposed by the defendants.

3 Doing business as a telecommunications carrier does not violate the False Claims Act
4 (“FCA”), and Relator’s filing and pursuit of this case against Qwest based solely on the fact that
5 Qwest is a telecommunications carrier is an abuse of the FCA and of this Court. Now that the
6 Court has dismissed Relator’s claims with prejudice, the FCA, the Court’s inherent powers, and
7 Federal Rule of Civil Procedure 11 all give this Court the authority to award fees and costs for
8 Relator’s frivolous claims. Indeed, Congress has recognized that fee awards are an especially
9 important deterrent in qui tam cases under the FCA, which allows relators to act for the
10 government and provides uniquely powerful remedies. Qwest incurred \$117,326.79 in attorneys’
11 fees and costs defending against Relators’ claims, which never had any factual basis. Qwest
12 respectfully requests that the Court award it those fees and costs.

13 **II. BACKGROUND**

14 **A. Procedural History**

15 Relator filed his original Complaint under seal on June 3, 2009. *See* Dkt. 1. On July 8,
16 2011, the United States filed its Notice of Election Not to Intervene at this Time. *See* Dkt. 15.
17 Likewise, none of the state or municipal authorities elected to intervene. *See* Dkt. 9 (setting June
18 14, 2011 cut-off date for intervention); *see also* Dkt. Nos. 10, 11, 12 & 14 (individual state
19 declinations). The Court unsealed Relator’s Complaint concurrent with the filing of the United
20 States’ declination notice. *See* Dkt. No. 15.

21 Relator’s original Complaint contained no allegations whatsoever specific to Qwest;
22 Qwest was referred to only once in the complaint, where Relator identifies Qwest as a defendant.
23 *See* Cmplt. ¶ 27 (identifying Qwest) (Dkt. 1). Relator obscured his lack of knowledge about
24 Qwest by referring throughout the original complaint to the “Telecoms” as a collective and
25 undifferentiated unit. *E.g., id.* ¶¶ 3, 4, 34, 48, 49. The defendants jointly moved to dismiss
26 Relator’s original Complaint on January 17, 2012, on the grounds that the Court lacked subject
27 matter jurisdiction pursuant to the FCA’s public disclosure bar and that Relator failed to plead
28 facts sufficient to state a claim in violation of Rules 12(b)(6) and 9(b). *See* Dkt. 63. Qwest and

1 two other defendants filed a separate pleading specifically noting the lack of allegations specific
2 to Qwest and those defendants. Dkt. 65.

3 In April 2012, the Court granted defendants' motion to dismiss Relator's original
4 Complaint with leave to amend. The Court specifically instructed Relator to include in any
5 amended complaint "everything that he believes identifies his duties, and why this wasn't within
6 his duties, and why it was not publicly-released information public disclosure." *See* April 20,
7 2012 Motion Hearing Transcript (Dkt. 81) at 28 (cautioning Relator that any amended complaint
8 must identify "why our fine friends here should be included in the complaint"). The Court also
9 authorized limited discovery. *Id.* at 29-30.

10 On May 11, 2012, defendants jointly wrote to Relator's counsel and cautioned that they
11 believed Relator's claims to be without merit and that Relator "stands a significant risk of being
12 ordered to pay Defendants' attorneys' fees and expenses . . . and will only increase that risk by
13 pressing forward with an amended pleading." *See* Declaration of David F. Taylor ("Taylor
14 Decl."), Ex. G. Rather than heed the Court's (and defendants') warning, Relator instead filed an
15 Amended Complaint on July 18, 2012, that still failed to identify any specific misconduct by
16 Qwest. *See* Am. Cmplt. (Dkt. 86). Thereafter, pursuant to the Court's April 20 order, defendants
17 scheduled Relator's deposition for December 17, 2012 in San Francisco. On December 4, 2012,
18 Relator moved to delay (or avoid) that deposition because "increased and ongoing job
19 responsibilities" "greatly burdened" Relator; he proposed to reschedule the deposition or avoid an
20 in-person deposition altogether. *See* Dkt. 102 at 4, 9 (proposing video deposition as alternative).
21 The Court denied Relator's motion on December 12, 2012, *see* Dkt. 107, and Relator's deposition
22 finally occurred on December 17, 2012. *See generally* Taylor Decl., Ex. F.

23 As became clear during Relator's deposition, Relator had no evidence to support his
24 claims against Qwest. *See id.* at 239:7-240:8; *see also* Section II.B, *infra* (detailing Relator's lack
25 of knowledge). Additionally, Relator's admitted that his Amended Complaint contained
26 numerous falsehoods. *See generally* Taylor Decl., Ex. F; *see also* Section II.C, *infra* (detailing
27 Relator's falsehoods). Following Relator's deposition, the defendants moved to dismiss Relator's
28 Amended Complaint. *See* Dkt. No. 123.

1 The Court dismissed the Amended Complaint with prejudice on November 5, 2013, based
2 upon the Court's finding that it lacked subject matter jurisdiction over Relator's claims under the
3 FCA. *See* Order Granting Defendants' Motion to Dismiss Amended Complaint dated November
4 5, 2013 (Dkt. 159) ("Order"). The Court's decision was based on the public disclosure bar in 31
5 U.S.C. § 3730(e)(4) and its findings that Relator lacked the direct and independent knowledge of
6 facts supporting his allegations necessary to qualify as an original source. *Id.* at 2. The Court
7 found that "Relator's allegations were based on little more than conjecture," noting, for example,
8 that his knowledge of the alleged overcharging was limited to "a review of two to five invoices"
9 for which Relator could not provide any detail and that Relator had no knowledge of the
10 defendants' internal costs for services provided so Relator "could only speculate about what they
11 might have been." Order at 9.

12 **B. The Relator Admits To Having No Knowledge Whatsoever of Any**
13 **Wrongdoing by Qwest**

14 As discussed above, Relator admitted in his sworn deposition testimony that he had no
15 knowledge of any wrongdoing whatsoever by Qwest when he filed the original Complaint and the
16 Amended Complaint asserting claims under the FCA that Qwest, as a telecommunications carrier,
17 defrauded the United States and numerous state governments. Relator admitted all of the
18 following facts under oath:

- 19 • Relator does not know of anything done by Qwest to defraud any federal or state
20 agency. Taylor Decl., Ex. F (Relator's Dep. at 243:12-17).
- 21 • Relator has "no knowledge of any particulars" supporting his claims against Qwest.
22 *Id.* at 240:4-8.
- 23 • Relator has no knowledge of anything that Qwest did to conspire with any other
24 defendant. *Id.* at 241:13-24.
- 25 • Relator is not aware of any facts pled in his Amended Complaint showing any
26 wrongdoing by Qwest. *Id.* at 241:1-4.
- 27 • Relator has no knowledge of the expenses that Qwest incurred in providing wiretaps.
28 *Id.* at 242:21-25.
- Relator has never seen even a single invoice from Qwest. *Id.* at 244:14-23.

- Relator does not even know whether the governments he purports to represent ever paid Qwest for wiretaps. *Id.* at 237:14-239:6.
- Relator included Qwest as a defendant in this action only because his attorney decided to do so, a decision that Relator never questioned and which he had no information to support. *Id.* at 243:6-17.

These admissions demonstrate that Relator does not have—and never did have—any knowledge supporting his claims against Qwest, much less the direct and independent knowledge of facts supporting his allegations required to show him to be an original source under the FCA. In short, Relator’s claims as to Qwest were always baseless and without any factual support.

C. The Relator Admits to Making False Statements in Filings with this Court

Relator also admitted in his deposition to making a number of false statements in filings with this Court. In his Amended Complaint, Relator alleged that he reviewed hundreds of wiretapping invoices. Am. Cmplt. ¶¶ 38, 84. In fact he reviewed only a handful (and none from Qwest), Taylor Decl., Ex. F (Relator Dep. at 81:10-13, 17:2-10; 53:20-54:13); *see also id.* at 13:4-8 (admitting that “it’s erroneous to say that I reviewed and signed off on hundreds of these invoices”). Relator also claimed that one of the other defendants’ representatives personally informed him that it based rates on other carriers’ charges. Am. Cmplt. ¶ 88. In fact he learned of the purported conversation secondhand. Taylor Decl., Ex. F (Relator Dep. at 35:10-12, 122:7-123:10, 127:23-24). Relator also claimed that he was “uniquely” positioned to determine whether a wiretap overcharging scheme was afoot because of his review and approval of wiretapping invoices. Am. Cmplt. ¶ 4, 10. In fact he has never been responsible for reviewing or approving wiretapping invoices. Taylor Decl., Ex. F (Relator Dep. at 27:6-15, 83:17-19). Similarly, in a sworn statement filed with the Court, Relator alleged that he was the first one to publicly raised concerns about exorbitant wiretap provisions costs. (Dkt. 73-2 ¶ 9). In fact, others raised such concerns before Relator, and Relator admitted in his deposition that his sworn affidavit asserting that he was the first to accuse the carriers of overcharges was wrong. Taylor Decl., Ex. F (Relator Dep. at 172:8-16).

Relator pled or otherwise made these false statements only after the Court expressly cautioned Relator that his Amended Complaint must identify the factual basis of his claims

against each of the defendants. Furthermore, the statements were plainly material to the “original source” issue that Relator sought to address with his Amended Complaint. And Relator admitted these falsehoods only when compelled to answer defendants’ deposition questions under oath. Regardless of whether Relator’s false statements were intentional or just reckless, there can be no dispute that Relator made material false statements to the Court on a key issue, in the face of warning from both the Court and defendants, which Qwest and the other defendants uncovered only through Relator’s deposition.

D. Qwest Incurred Attorneys’ Fees and Expenses Defending Against Relator’s Unfounded Claims of Fraud

In defending Qwest against Relator’s baseless and false allegations, Qwest incurred attorneys’ fees in a total amount of \$115,445.06 for 220.4 hours of work. The following chart summarizes by timekeeper the rates charged and the hours billed.

Timekeeper	Position	Billed Hourly Rate	Hours Worked	Total Billed
A. Gidari	Attorney	\$644	0.3	\$193.20
		\$681	0.7	\$476.56
B. (Roos) Lee	Attorney	\$363	10.0	\$3,634.00
		\$414	46.3	\$19,168.20
		\$428	14.0	\$5,989.20
D. Taylor	Attorney	\$547	5.9	\$3,510.50
		\$584	97.9	\$57,193.18
		\$616	33.0	\$20,341.20
J. Devaney	Attorney	\$501	1.2	\$601.68
		\$520	6.4	\$3,326.72
		\$585	0.4	\$215.28
L. McClard	Paralegal	\$184	3.4	\$625.60
		\$189	0.9	\$169.74
Total, all timekeepers			220.4	\$115,445.06

Taylor Decl. ¶ 1; *see also id.*, Ex. A. Qwest also incurred \$1,881.73 in expenses. *Id.* ¶ 2.

1 **III. ARGUMENT**

2 **A. The Court Should Award Qwest Its Attorneys' Fees and Expenses Pursuant**
3 **to § 3730(d)(4), the Court's Inherent Power, and Rule 11**

4 **1. Applicable Legal Standards**

5 Each of 31 U.S.C. § 3730(d)(4) of the FCA, the Court's inherent power, and Rule 11
6 authorize the Court to award attorneys' fees and costs to Qwest because Relator filed a frivolous
7 lawsuit against Qwest, admittedly without any factual support.

8 **a. Section 3730(d)(4) of the FCA**

9 31 U.S.C. § 3730(d)(4) grants this Court discretion to award attorneys' fees and expenses
10 to prevailing defendants in a qui tam action in which the government declined to intervene.
11 Specifically, section 3730(d)(4) provides:

12 If the Government does not proceed with the action and the person
13 bringing the action conducts the action, the court may award to the
14 defendant its reasonable attorneys' fees and expenses if the
15 defendant prevails in the action and the court finds that the claim of
16 the person bringing the action was clearly frivolous, clearly
17 vexatious, or brought primarily for the purposes of harassment.

18 "The [Senate] Committee added this language in order to create a strong disincentive and send a
19 clear message to those who might consider using the private enforcement provision of this Act for
20 illegitimate purposes." 99 Sen. Rep. 345 at 29, 1986 U.S.C.C.A.N. 5266, 196 WL 31937 (July
21 28, 1986).

22 To award attorneys' fees and expenses under §3730(d)(4), the Court must find that (1) the
23 government did not proceed in the action, (2) the defendant prevailed in the action, (3) the claim
24 was clearly frivolous, clearly vexatious, or primarily for the purposes of harassment, and (4) the
25 requested fees are reasonable. *See, e.g., United States ex rel. Mikes v. Straus*, 98 F. Supp. 2d 517,
26 526 (S.D.N.Y. 2000) (any one of the grounds—frivolousness, vexatiousness, or harassment—will
27 independently support an award). An action is 'clearly frivolous' when 'the result is obvious or
28 the appellant's arguments of error are wholly without merit.'" *Pfingston v. Ronan Eng'g Co.*, 284
F.3d 999, 1006 (9th Cir. 2002). "An action is 'clearly vexatious' or 'brought primarily for
purposes of harassment' when the plaintiff pursues the litigation with an improper purpose, such
as to annoy or embarrass the defendant." *Id.*

1 **b. The Court’s Inherent Power**

2 The Court may also award fees and expenses to Qwest pursuant to its inherent power,
3 which permits a court to “assess attorneys’ fees . . . when the losing party has ‘acted in bad faith,
4 vexatiously, wantonly, or for oppressive reasons.” *Alyeska Pipeline Serv. Co. v. Wilderness*
5 *Soc’y*, 421 U.S. 240, 258-59 (1975). “Before awarding sanctions under its inherent powers,
6 however, the court must make an explicit finding that [the party]’s conduct constituted or was
7 tantamount to bad faith.” *Primus Automotive Fin. Servs. v. Batarse*, 115 F.3d 644, 648-49 (9th
8 Cir. 1997) (quotations omitted). A finding of bad faith is warranted where a party “knowingly or
9 recklessly raises a frivolous argument” *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431,
10 436 (9th Cir. 1996) (citation omitted).

11 **c. Rule 11**

12 Finally, Rule 11 provides, in relevant part, as follows:

13 By presenting to the court a pleading, written motion, or other paper
14 . . . an attorney . . . certifies that to the best of the person’s
15 knowledge, information, and belief, formed after an inquiry
16 reasonable under the circumstances

17 (1) it is not being presented for any improper purpose, such as
18 to harass, cause unnecessary delay, or needlessly increase
19 the cost of litigation

20 *****

21 (3) *the factual contentions have evidentiary support*, or if
22 specifically identified, will likely have evidentiary support
23 after a reasonable opportunity for further investigation or
24 discovery

25 Fed. R. Civ. P. 11(b) (emphasis added). Rule 11 allows the Court to sanction “any attorney, law
26 firm, or party that violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1).
27 The Court’s sanctions may include reasonable attorneys’ fees and expenses incurred as a result of
28 the violation. Fed. R. Civ. P. 11(c)(4). One of the fundamental purposes of Rule 11 is to “reduce
frivolous claims, . . . [thereby] avoid[ing] delay and unnecessary expense in litigation.” *Golden*
Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 (9th Cir. 1986) (internal quotation
marks and citations omitted); *see also Crawford-El v. Britton*, 523 U.S. 574, 600 (1998) (Rule 11

1 “authorizes sanctions for the filing of papers that are frivolous, lacking in factual support, or
2 presented for any improper purpose, such as to harass”).

3 Where, as here, the complaint is the primary focus of Rule 11 proceedings, a district court
4 must conduct a two-prong inquiry to determine (1) whether the complaint is legally or factually
5 “baseless” from an objective perspective, and (2) if the attorney has conducted “a reasonable and
6 competent inquiry” before signing and filing it. *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir.
7 1997), *abrogated on other grounds by Fossen v. Blue Cross and Blue Shield of Montana, Inc.*,
8 660 F.3d 1102 (9th Cir. 2011).

9 **2. The Record Demonstrates that Relator’s Action Was Frivolous**

10 In this case, Relator filed and pursued a lawsuit against Qwest without any factual support
11 for his claims. At no time, and in no pleading, were Relator’s claims against Qwest based on
12 anything other than Qwest’s role as a telecommunications provider. *See* Taylor Decl., Ex. F
13 (Relator’s Dep. at 241:1-4) (admitting that he is not aware of any facts pled in his Amended
14 Complaint showing any wrongdoing by Qwest); *see also id.* at 237:1-239:6 (Relator does not
15 even know whether the government ever paid Qwest for wiretaps). Relator knew, when he filed
16 his original Complaint and when he filed his Amended Complaint, that he had no basis for his
17 claims against Qwest. Relator simply had no knowledge of any facts showing wrongdoing by
18 Qwest. *See* Taylor Decl., Ex. F.

19 Courts have often awarded fees and expenses where, as here, a plaintiff has no factual
20 support whatsoever for his claims. *E.g., Mikes v. Straus*, 274 F.3d 687, 705 (2d Cir. 2001)
21 (“[s]ince plaintiff’s allegations were bereft of any objective factual support, they clearly had no
22 chance of success . . . [and] an award of attorneys’ fees to defendants was fully justified.”);
23 *Martel v. Maxxam, Inc.*, 211 F.3d 594, 2000 WL 329354, at *2-3 (5th Cir. Mar. 23, 2000) (per
24 curiam) (unpublished decision) (upholding ruling that suit was frivolous because plaintiff knew
25 he was not the original source of information); *United States ex rel. Herbert v. Nat’l Acad. of*
26 *Sciences*, Civ. A. No. 90-2568, 1992 WL 247587, at *7 (D.D.C. Sept. 15, 1992) (awarding fees
27 under Rule 11 and § 3730(d)(4) where relator’s “action is not really based on facts at all. Rather
28 it is based on his opinion”); *United States ex rel. Minna Rae Winer Children’s Class Trust v.*

1 *Regions Bank of La.*, Civ. A. No. 94-4085, 1996 WL 264981, at *7 (E.D. La. May 17, 1996)
2 (awarding fees to defendant where the court found that the action was “clearly frivolous and
3 meant primarily to harass” because relator’s claim had “no support” and “is in reality not based
4 upon the facts at all, but rather, on personal opinion that the great disparity in acquisition and
5 selling price of the property at issue could only be the result of some collusive scheme . . . to
6 defraud the Government.”).

7 Relator’s admissions conclusively demonstrate that he filed an objectively meritless claim
8 against defendant Qwest. Only *after* filing his original Complaint and his Amended Complaint
9 and seeking to delay (or avoid) his deposition, did Relator finally admit that he does not know of
10 any wrongdoing by Qwest and does not know of anything done by Qwest to defraud any federal
11 or state agency. Taylor Decl., Ex. F (Relator’s Dep. at 239:7-240:8, 243:12-17). It is well-
12 established that, under the FCA, a relator must be an original source of publicly disclosed
13 information and thus must show both that he has “direct and independent knowledge” of the
14 information on which his allegations against Qwest are based. 31 U.S.C. § 3730(e)(4). Relator
15 cannot dispute that his complaint was legally and factually baseless where his own sworn
16 admissions demonstrate that he has no knowledge of any information supporting any allegation of
17 fraud against Quest. It is simply impossible to have direct and independent knowledge without
18 *any* knowledge.

19 Additionally, Relator conducted no investigation whatsoever concerning Qwest. Based
20 upon the Complaint, it appears he named Qwest as a defendant simply because it is a
21 telecommunications carrier. Failure to investigate falls below the requisite Rule 11 standard.
22 *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002). Because Relator’s complaint is
23 both factually and legally meritless, the Court should award Qwest its attorneys’ fees and
24 expenses pursuant to Rule 11. *See, e.g., United States ex rel. Herbert v. Nat’l Academy of*
25 *Sciences*, Civ. A. No. 90-2568, 1992 WL 247587, at *8-9 (D.D.C. Sept. 15, 1992) (awarding fees
26 under both § 3730(d)(4) and Rule 11 in part because relator’s claims were unsupported by facts
27 and “little more than . . . his personal grievance against” the defendant); *United States ex rel.*
28 *Leveski v. ITT Educ. Serv., Inc.*, No. 1:07-cv-0867-TWP-MJD, 2012 WL 1028794, at *12 (S.D.

1 Ind. Mar. 26, 2012) (rejecting relator’s counsel’s argument that her complaint cannot be frivolous
2 because it survived a motion to dismiss because her “lack of firsthand knowledge could not be
3 demonstrated until she was deposed. In other words [defendant] was required to do some digging
4 before ferreting out the frivolousness of this case” and awarding fees under Rule 11 against
5 relator’s counsel).

6 Finally, because Relator filed a claim against Qwest without any factual support with the
7 knowledge that he therefore could not meet the requirements the FCA places on a relator,
8 Relator’s conduct demonstrates that he “knowingly or recklessly raise[d] a frivolous argument,”
9 *In re Keegan*, 78 F.3d at 436, that supports a finding of bad faith for the imposition of attorneys’
10 fees pursuant to the Court’s inherent powers. *See, e.g., Public Interest Bounty Hunters v. Bd. of*
11 *Governors of the Fed. Reserve Sys.*, 548 F. Supp. 157 (N.D. Ga. 1982) (awarding fees to FCA
12 defendants pursuant to court’s inherent powers where plaintiff’s prior lawsuits against defendants
13 in his individual capacity had failed, so although plaintiff now styled the “identical facts” as a qui
14 tam action, plaintiff knew the court would not grant the relief sought; plaintiff’s litigation was
15 “vexatious and unfounded”); *see also United States ex rel. Sampson v. Crescent City E.M.S., Inc.*,
16 No. Civ.A 96-3505, 1997 WL 570688, at *2 (E.D. La. Sept. 12, 1997) (awarding attorneys’ fees
17 and expenses as Rule 11 sanction against relator because prior related qui tam proceedings
18 “eviscerate[d]” any “good faith” belief that relator’s “case would not summarily suffer the same
19 fate (i.e., dismissal for lack of subject matter jurisdiction)”).

20 Taken together, Relator’s filing of not only the original Complaint but also the Amended
21 Complaint was frivolous where Relator knew that he had no factual support whatsoever for his
22 claims against Qwest and thus knew he could not be the original source of any information
23 supporting his claims against Qwest. And Relator filed his Amended Complaint even after the
24 district court directed him to plead facts showing why each defendant was liable and after
25 defendants’ cautioned Relator that he risked sanctions by filing a baseless amended complaint.
26 Although an award of fees under the FCA is “reserved for rare and special circumstances,”
27 *Pfingston*, 284 F.3d at 1006-07, this is such a case. There is no dispute that no government
28 intervened in this case or that Qwest prevailed in this action. And Relator has admitted in sworn

1 testimony that he has no information—much less independent evidence—of any wrongdoing by
2 Qwest. As explained more thoroughly below, Qwest has been forced to incur substantial fees to
3 defend itself against this baseless lawsuit, fees that were increased due to Relator’s false
4 statements to the Court and his persistence in pursuing unsupported claims against Qwest.
5 Because Relator’s claims were frivolous, Relator’s conduct constitutes “bad faith” pursuant Rule
6 11. The Court should thus award Qwest its attorneys’ fees and expenses pursuant to
7 § 3730(d)(4), the Court’s inherent power, and Rule 11.

8 **B. The Court Has Authority to Award Fees Under § 3730(d)(4)**

9 Relator may argue that because the Court dismissed his action pursuant to the public
10 disclosure bar of § 3730(e)(4), that the Court is without authority to award fees and expenses
11 under § 3730(d)(4). This is wrong. Although the Ninth Circuit has not directly addressed
12 whether a district court retains jurisdiction to award attorneys’ fees pursuant to § 3730(d)(4)
13 where the district court dismissed relator’s complaint pursuant to the public disclosure bar, each
14 of the courts—including the only circuit court of appeal—that has addressed this issue has held
15 that courts have authority to award fees under § 3730(d)(4) in cases dismissed for lack of
16 jurisdiction pursuant to § 3730(e)(4).

17 The Tenth Circuit in *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038 (10th
18 Cir. 2004), reasoned that “[c]ourts that lack jurisdiction with respect to one kind of decision may
19 have it with respect to another. A court, for example, always has jurisdiction to consider its own
20 jurisdiction.” 389 F.3d at 1056 (quoting *Citizens for a Better Env’t v. Steel Co.*, 230 F.3d 923,
21 926 (7th Cir. 2000) (permitting fee award under 42 U.S.C. § 11406(a)(1))). The court identified
22 statutes such as 28 U.S.C. § 1919 and 1447(c) that specifically “permit awards of litigation
23 expenses in suits that federal courts are not authorized to decide on the merits” and the “[u]se of
24 this fee-shifting power has been uncontroversial.” *Id.* (quotations omitted). Accordingly, the
25 court concluded that “[t]here is no Article III roadblock” to awarding fees under § 3730(d)(4). *Id.*
26 at 1057. The court reasoned that the defendant had suffered an injury as a result of a frivolous
27 lawsuit that may be redressed by an award of attorneys’ fees. *Id.* at 1056-57; *see also United*
28 *States ex rel. Atkinson v. Penn. Shipbuilding Co.*, 528 F. Supp. 2d 533, 539-41 (E.D. Penn. 2007);

1 *cf. United States v. Vuyyuru*, 555 F.3d 337, 357 (4th Cir. 2009) (affirming district court’s award
2 of fees under § 3730(d)(4) following dismissal pursuant to the public disclosure bar); *Martel*,
3 2000 WL 329354, at *2 (same); *United States ex rel. Bain v. Georgia Gulf Corp.*, 208 Fed. Appx.
4 280, 2006 WL 3093637, at *3-4 (5th Cir. Oct. 26, 2006) (same); *United States ex rel. J. Cooper*
5 *& Assocs. v. Bernard Hoes Grp., Inc.*, 422 F. Supp. 2d 225, 237-239 (D.D.C. Mar. 23, 2006)
6 (awarding fees under § 3730(d)(4) following dismissal pursuant to the public disclosure bar);
7 *Herbert*, 1992 WL 247587, at *8 (same).¹

8 These decisions are consistent with congressional intent. By enacting § 3730(d)(4),
9 Congress intended to dissuade litigation that is frivolous. *See* 99 Sen. Rep. 345 at 29 (“The
10 Committee added this language in order to create a strong disincentive and send a clear message
11 to those who might consider using the private enforcement provision of this Act for illegitimate
12 purposes.”). As the Ninth Circuit has recognized, “[t]o balance the incentive to bring suit
13 provided by the ‘original source’ and damages provisions [under the FCA], Congress authorized
14 the award of attorney’s fees and expenses to prevailing defendants if an action is frivolous,
15 harassing, or vexatious.” *United States ex rel. Barajas v. Northrop Corp.*, 5 F.3d 407, 410 n.9
16 (9th Cir. 1993). As part of this balancing act, § 3730(d)(4) removes jurisdiction over one type of
17 case that Congress deemed unnecessary: suits, like this one, brought by persons who do not have
18 first-hand knowledge of fraudulent conduct that instead could be brought by the government
19 based on publicly available information. Eliminating jurisdiction to award attorneys’ fees and
20 expenses in such cases would have the illogical consequence of disallowing fees in cases
21 specifically identified by Congress as undesirable.

22 Although the Ninth Circuit has held under different circumstances and under a different
23 statute that in those instances where 42 U.S.C. § 1983 jurisdiction is lacking, the district court
24

25 ¹ The court in *United States ex rel. Montgomery v. St. Edward Mercy Medical Center*, No. 4:05-
26 CV-00899 GTE, 2008 WL 110858 (E.D. Ark. Jan. 8, 2008), declined to decide the jurisdictional issue
27 because, even assuming jurisdiction, the court denied attorneys’ fees and expenses under § 3730(d)(4)
28 because the public disclosure bar was not clearly established when the relator filed his amended complaint.
See id. at * 3, 6 (the Supreme Court’s decision in *Rockwell Int’l Corp. v. United States*, 549 U.S. 457
(2007), the Supreme Court’s first substantive decision on the public disclosure bar, was issued after relator
had filed his amended complaint).

1 lacks the power to award attorneys' fees under § 1988, that case is distinguishable and does not
2 govern. *See Branson v. Nott*, 62 F.3d 287, 293 (9th Cir. 1995). First, the Ninth Circuit has never
3 held that the ruling in *Branson* extends to an award of attorneys' fees and expenses under
4 § 3730(d)(4) for claims in an action dismissed under § 3730(e)(4). Second, as discussed above,
5 extension of the *Branson* holding to the FCA would be contrary to every other case that has
6 addressed this issue. As the Tenth Circuit held, "[t]here is no Article III roadblock" to awarding
7 fees under § 3730(d)(4). *Grynberg*, 389 F.3d at 1057. Third, as also discussed above, extending
8 *Branson* to awards under § 3730(d)(4) against would-be relators who file frivolous qui tam
9 actions would be directly contrary to Congressional intent. *Barajas*, 5 F.3d at 410 n.9 (Congress
10 intended § 3730(d)(4) as strong deterrent against filing frivolous qui tam lawsuits by relators).

11 Finally, the reasoning of *Branson* does not apply here. The Ninth Circuit in *Branson*
12 reasoned that a court does not retain jurisdiction to award fees following dismissal of the
13 underlying action for subject-matter jurisdiction where the fee-shifting statute does not
14 independently confer jurisdiction. *Branson*, 62 F.3d at 293. The Ninth Circuit reasoned that
15 §1988 does not by its terms confer subject matter jurisdiction, but rather must be read in
16 conjunction with other statutes, such as § 1983. *Id.* But here, unlike the statutes at issue in
17 *Branson*, the fee-shifting provision of the FCA, § 3730(d)(4), is a *subpart* of the very statute that
18 confers jurisdiction over an FCA action, i.e., § 3730 (and even more broadly, the FCA itself). *See*
19 31 U.S.C. §3730 ("Civil action for false claims."). Accordingly, the concern present in *Branson*
20 is simply not present here.² Indeed, Congress enacted § 3730(d)(4) *at the same time* that it
21 enacted the public disclosure bar at § 3730(e)(4) and clearly intended these two subparts of
22 § 3730 to complement each other. *See* 99 Sen. Rep. 345, *supra*. Thus, given the plain language
23 of the statute and the purpose of § 3730(d)(4)—to deter qui tam relators who have no first-hand
24
25

26 ² The Ninth Circuit acknowledged in *Branson* that "there are some circumstances in which
27 attorneys' fees or costs may be imposed even where the court proves to be without subject matter
28 jurisdiction" and identified several examples, including Rule 11. *Branson*, 62 F.3d at 293 & n.10.
Accordingly, even the Ninth Circuit recognizes that *Branson* will not apply in every case dismissed for
lack of subject matter jurisdiction. This is such a case.

1 knowledge of fraudulent conduct from filing frivolous lawsuits in pursuit of a substantial
2 bounty—the Court should decline to extend *Branson* to the FCA.³

3 **C. Qwest’s Attorneys’ Fees and Expenses are Reasonable**

4 A prevailing party’s attorneys’ fees are calculated using the lodestar method. *Moreno v.*
5 *City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Under the lodestar calculation, the
6 court must determine a reasonable hourly rate and then multiply that rate by the number of hours
7 reasonably expended on the litigation. *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th
8 Cir. 1987); *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). There is a strong presumption that
9 the lodestar figure represents a reasonable fee. *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir.
10 1994).

11 In determining a fee’s reasonableness, courts must consider, inter alia: (i) the number of
12 hours reasonably expended by counsel; (ii) the propriety of the hourly rate requested by counsel;
13 (iii) the skill and experience of counsel given the legal services at issue; (iv) the results obtained;
14 and (v) whether the hours requested are excessive, redundant, or otherwise unnecessary. *Green v.*
15 *Baca*, 225 F.R.D. 612, 614 (C.D. Cal. 2005) (citing *Hensley*, 461 U.S. at 433-35). In exercising
16 its discretion in setting a fee, a court must examine “the reasonableness of the fee in light of the
17 totality of the circumstances.” *Id.* at 615 (quotations omitted).

18 **1. The Number of Hours Expended Are Reasonable**

19 Qwest’s attorneys billed 220.4 hours on this matter. These hours are reflected in
20 contemporaneous time records that Qwest’s counsel maintained electronically and were invoiced
21 to Qwest on a monthly basis. Taylor Decl. ¶¶ 3, 5-6. This amount is reasonable, considering,
22

23 ³ Additionally, the Ninth Circuit stated that a dismissal for lack of subject matter jurisdiction
24 typically does not adjudicate the merits of the underlying claim. *See Branson*, 62 F.3d at 293. But that is
25 not the case with the FCA. Under the FCA a dismissal under the public disclosure provision is
26 functionally with prejudice because the relator cannot bring the same claim on the same facts again in any
27 court. *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 951 (1997) (the public
28 disclosure provision of the FCA “speaks not just of the power of a particular court to but to the substantive
rights of the parties as well.”). Thus, dismissal under the public disclosure bar alters the legal relationship
of the parties, and where, as here, a defendant successfully dismisses the relator’s claim pursuant to the
public disclosure bar, the defendant is a prevailing party. *See, e.g., Cooper & Assocs.*, 422 F. Supp. 2d
225, 238-39 (defendants were “prevailing parties” following dismissal under the public disclosure bar);
Atkinson, 528 F. Supp. 2d at 542 (same).

1 among other things: the interests of Qwest in dismissing Relator's frivolous claims of fraud
2 against it, the nature of the issues, the research and writing involved in deposing Relator (required
3 to ferret out his lack of knowledge) and the motions to dismiss, the fact that the work was
4 performed by attorneys with experience appropriate to the tasks, and the results obtained. A
5 review of the invoices demonstrates that the hours were generally expended on legal research,
6 discovery, and fact development; drafting two motions to dismiss and attending two oral
7 arguments; and deposing Relator (a total of 194.7 hours was expended on these material tasks):

- 8 • Draft Motion to Dismiss Original Complaint, Including Communications, Legal
9 Research Regarding Motion to Dismiss, and Oral Argument: 60 hours;
- 10 • Draft Motion to Dismiss Amended Complaint, Including Opposition to Request to File
11 Sur-Reply, Communications, Legal Research Regarding Motion to Dismiss, and Oral
12 Argument: 42 hours;
- 13 • Deposition of Relator John C. Prather, Including Communications, Preparation, and
14 Response to Motion for a Protective Order Regarding Relator's Deposition: 18.9
15 hours;
- 16 • Legal Research and Analysis Regarding Relator's Claims, Including Fact
17 Development, Witness Interviews, and Communications with Relator's Counsel
18 Regarding Deficiencies in Pleadings: 45.2 hours; and
- 19 • Discovery-Related Tasks, Including Document Production, Analysis of Access to
20 Government Confidential Documents, and Preparation of Case Management Schedule
21 and Conference: 28.6 hours.

22 The remaining 25.7 hours were expended on a variety of tasks, including communications with
23 other defense counsel, and preparing filings such as counsel's notice of appearance, and support
24 provided by other attorneys (and paralegal). *See* Taylor Decl. ¶¶ 1, 3-5, Ex. A.

25 **2. The Hourly Rates Are Reasonable**

26 As set forth in the Declaration of David F. Taylor filed concurrently herewith, Qwest
27 incurred \$115,445.06 in attorneys' fees and \$1,881.73 in expenses in this matter. Taylor Decl.
28 ¶¶ 1-2. Qwest respectfully submits that the fees and costs incurred in defending Relator's
frivolous claims against it are reasonable. Qwest's counsel billed its services at its established
rates, which rates are comparable to the prevailing market rates in the markets in which Qwest's
counsel practice for "similar work performed by attorneys of comparable skill, experience, and

1 reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1201-11 (9th Cir. 1986); Taylor
2 Decl. ¶ 5.

3 The time devoted to the matter was, moreover, reasonable, especially in light of the stakes
4 for Qwest. The FCA imposes treble damages and a \$5,500 to \$11,000 civil penalty per claim
5 upon a judicial determination that a defendant submitted false claims. Given the number of false
6 claims allegedly submitted in this case, the potential liability was in the tens of millions (or more)
7 of dollars. Given the gravity of the allegations and the potential liability, Qwest rightfully sought
8 experienced counsel with FCA litigation experience. For all these reasons, Qwest respectfully
9 submits that the fees and expenses incurred in this matter are reasonable.

10 **IV. CONCLUSION**

11 Qwest respectfully requests that it be awarded the total amount of \$117,326.79, which
12 reflects the actual attorneys’ fees and expenses incurred by Qwest in defending Relator’s legally
13 and factually frivolous claims against it.

14
15 DATED: November 19, 2013

PERKINS COIE LLP

16 By: /s/ David F. Taylor
17 David F. Taylor

18 Attorneys for Defendant Qwest
19 Communications International Inc.
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

- **Sheila Anil Gogate Armbrust**
sarmbrust@sidley.com,grodriguez@Sidley.com,kcochran@Sidley.com
- **Douglas Aaron Axel**
daxel@sidley.com
- **John Gerard Balestriere**
john.balestriere@balestriere.net,thomas.martecchini@balestriere.net,ecf@balestriere.net,jillian.mcneil@balestriere.net
- **Edward Coleman Barnidge**
ebarnidge@wc.com
- **Jonathan Hugh Blavin**
jonathan.blavin@mto.com,rachel.mullinax@mto.com
- **Jennifer Yvette McClory Hamilton**
Jennifer.McClory@doj.ca.gov
- **David James Miclean**
DMiclean@MicleanGleason.com,dmiclean@micleangleason.com,Smurphy@micleangleason.com
- **Kristin Linsley Myles , Esq**
kristin.myles@mto.com,maureen.lechwar@mto.com
- **Richard John O'Brien , Jr**
robrien@sidley.com,efilingnotice@sidley.com,sfdocket@sidley.com
- **Joshua A. Reiten**
jreiten@perkinscoie.com,ecarmichael@perkinscoie.com,docketsflit@perkinscoie.com
- **Breena Michelle Roos**
broos@perkinscoie.com,mwalsh@perkinscoie.com
- **Jerome Cary Roth**
Jerome.Roth@mto.com,susan.ahmadi@mto.com
- **Steven J. Saltiel**
Steven.Saltiel@usdoj.gov,Manik.Bowie@usdoj.gov
- **Anand Singh**
anand.singh@sidley.com
- **State of New York**
randall.fox@ag.ny.gov
- **Benjamin Michael Stoll**
bstoll@wc.com
- **Laura K Sullivan**
Laura.Sullivan@mto.com,Sandra.Chao@mto.com

1 **Manual Notice List**

2
3 The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case
4 (who therefore require manual noticing). You may wish to use your mouse to select and copy this
5 list into your word processing program in order to create notices or labels for these recipients.

6 Dane H. Butswinkas
7 Williams & Connolly LLP
8 725 Twelfth Street, N.W.
9 Washington, DC 20005

10 Kimberly A. Dunne
11 Sidley Austin LLP
12 555 West Fifth Street, Suite 4000
13 Los Angeles, CA 90013

14 R. Hackney Wiegmann
15 Williams & Connolly LLP
16 725 Twelfth Street, N.W.
17 Washington, DC 20005

18 DATED: November 19, 2013

PERKINS COIE LLP

19 By: /s/ David F. Taylor
20 David F. Taylor

21 Attorneys for Defendant Qwest
22 Communications International Inc.